

Application No. : 10/782,266
Filed : February 18, 2004

REMARKS

The foregoing amendments and the following remarks are responsive to the October 18, 2007, non-final *Office Action*. Claims 91-95, 113-122, and 127-133 were considered and rejected by the Examiner. Applicant herewith amends Claims 91-95, 113, 114, 116, 118-122, 128, and 130. Applicant also herewith adds new Claims 134-142. In view of the following comments, Applicant respectfully requests that the Examiner pass all of the pending claims to allowance:

I. USPTO Failed to Recognize Power of Attorney and Change of Correspondence Address

Applicant notes that a Power of Attorney and Change of Correspondence Address were filed on July 26, 2007, with the Response to the Restriction Requirement. According to the Image File Wrapper on the PAIR system, the Power of Attorney document was available to the Patent Office on July 26, 2007, almost three months prior to the mailing date of the *Office Action*. However, the non-final *Office Action* was not sent to the Applicant's new representative, Knobbe, Martens, Olson & Bear, LLP, at Customer Number 20,995. Applicant's representative did not discover the *Office Action* until January 25, 2008 in a routine status check of the examination status of the present application. Since the Patent Office failed to recognize the Power of Attorney and Change of Correspondence Address and mailed the *Office Action* to previous counsel, Applicant respectfully requests that the Patent Office not charge any extension fees for the present response.

II. 35 U.S.C. § 112, 2nd Paragraph Rejection

In the *Office Action*, the Examiner rejected Claim 118 as being indefinite for failing to comply with the written description requirement based on the term in Claim 1 reciting "a plurality of final diameters." Applicant has amended Claim 118 and believes that the Examiner's objection is now moot in light of the amendment.

III. 35 U.S.C. § 103 Rejections

Claims 91-95, 113, 118, and 130-133 were rejected under 35 U.S.C. 103(a) as obvious over Fischell et al (U.S. Patent No. 5,695,516). Applicant has amended independent Claims 91, 113, 119, 122, and 130 and believes that the amended independent claims are allowable over Fischell et al. at least for the reasons set forth below.

Fischell et al. disclose a particular stent design that may be formed of unit cells which are either balloon expandable or self-expanding, depending on the material used (Col. 3, lines 22-26). If the unit cell is made of a balloon expandable material, the unit cell of the stent disclosed by Fischell et al. has a multiplicity of configurations between a collapsed configuration and an expanded configuration as it may be selectively expanded through a range of plastic deformation. In other words, the balloon expandable unit cell disclosed by Fischell et al. possesses other stable configurations between the stable collapsed configuration and the stable expanded configuration. Moreover, this construction does not possess a transition point geometry at which no additional force is needed to expand the unit cell to the expanded configuration.

If the stent disclosed by Fischell et al. is made of a self-expanding material, the unit cell has only one stable configuration, that being the expanded configuration. Thus, Fischell et al. is not capable of assuming a stable collapsed configuration and a stable expanded configuration. Moreover, a self-expanding unit cell autonomously expands and thus does not require a force to reach a transition point geometry at which no additional force is needed to expand the unit cell to the expanded configuration.

A. Independent Claims 91

Amended claim 91 recites at least one feature not disclosed or suggested by Fischell et al. For example, Claim 91 recites "providing an expandable device with a plurality of bistable cells, each of the bistable cells comprising first and second arcuate members, each cell capable of assuming a stable collapsed configuration and a stable expanded configuration." As noted above, Fischell et al. fail to teach such an element. Since amended Claims 91 recites an element not disclosed or suggested by Fischell et al., Claim 91, and all claims dependent therefrom, are patentable over the teachings of Fischell et al.

B. Independent Claim 113

Amended Claim 113 recites at least one feature not disclosed or suggested by Fischell et al. For example, Claim 113 recites "expanding the one or more cells by applying a force up to a transition point defining a geometry of the one or more cells at which no additional force is necessary to expand the one or more cells from a collapsed configuration to an expanded configuration, the expandable device being configured to expand upon removal of a force

beyond the transition point.” As noted above, Fischell et al. fail to teach or suggest such an element. Since amended Claim 113 recites an element not disclosed or suggested by Fischell et al., Claim 113, and all claims dependent therefrom, are patentable over the teachings Fischell et al.

C. Independent Claim 119

Amended Claim 119 recites at least one feature not disclosed or suggested by Fischell et al. For example, Claim 119 recites “providing an expandable device with a plurality of bistable cells, each of the bistable cells comprising first and second arcuate members, each cell capable of assuming a stable collapsed configuration and a stable expanded configuration.” As noted above, Fischell et al. fails to teach or suggest such an element. Since amended Claim 119 recites an element not disclosed or suggested by Fischell et al., Claim 119, and all claims dependent therefrom, are patentable over the teachings Fischell et al.

C. Independent Claim 122

Amended Claim 122 recites at least one feature not disclosed or suggested by Fischell et al. For example, Claim 122 recites “expanding the one or more cells from a stable collapsed configuration to a stable expanded configuration, wherein there are no stable configurations between the stable collapsed configuration and the stable expanded configuration.” Since amended Claim 122 recites an element not disclosed or suggested by Fischell et al., Claim 122, and all claims dependent therefrom, are patentable over the teachings Fischell et al.

D. Independent Claim 130

Amended Claim 130 recites at least one feature not disclosed or suggested by Fischell et al. For example, Claim 130 recites “transitioning at least some of the second arcuate members from a first stable collapsed position to a second stable expanded position, wherein no stable positions exist between the first stable collapsed position and the second stable expanded position.” Since amended Claim 130 recites an element not disclosed or suggested by Fischell et al., Claim 130, and all claims dependent therefrom, are patentable over the teachings Fischell et al.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicants are not conceding in this

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application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

Co-Pending Applications of Assignee

Applicant wishes to draw the Examiner's attention to the following co-pending applications of the present application's assignee.

Serial Number	Title	Filed
10/270,771	BISTABLE SPRING CONSTRUCTION FOR A STENT AND OTHER MEDICAL APPARATUS	11-Oct-2002
11/317,495	DEVICE COMPRISING BIODEGRADABLE BISTABLE OR MULTISTABLE CELLS AND METHODS OF USE	22-Dec-2005
11/391,940	FRACTURE-RESISTANT HELICAL STENT INCORPORATING BISTABLE CELLS AND METHODS OF USE	29-Mar-2006


Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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